A Lease is a Contract

Summary ejectment law is a complicated, confusing mishmash of modern-day consumer protection legislation, centuries-old property law, and plain old contract law, Getting in too deeply can lead to a person starting to throw around phrases like *livery of seisin* (a very old term from feudal England that basically required the old landowner to hand the new landowner a piece of dirt). That slip into madness is not required. While there's nothing intuitive about livery of seisin, we've all understood contract law since childhood. My six-year-old son once traded his 3-year-old sister two stuffed animals for lifetime rights in "the good chair." In the complicated world of summary ejectment law, sometimes it's useful to remember a simple truth: a lease is a contract. So let's think about what we all know about contracts, and then apply that knowledge to leases."Get it in writing" is familiar consumer advice for a reason. When an oral agreement is reduced to writing, the law treats the writing as the definitive expression of what the parties agreed to and will enforce it accordingly.

An oral lease is enforceable (assuming it does not exceed three years), but its terms may be a matter of dispute. A written lease definitively establishes the terms of the parties' agreement when it is signed, and testimony of contradictory oral terms will not be considered by the court (unless the oral agreement occurred sometime thereafter and is offered as evidence of modification of the written lease).

A contract may be simple or complicated. When a contract is simple and sets out only essential terms, the court may be called upon to "fill in the blanks." Sometimes the law provides a "default" answer for use when a contract is silent on a particular issue. Sometimes the court must determine a *reasonable* way to fill in a blank. Ultimately, the law seeks to enforce contracts in a manner consistent with the intentions of the parties.

Even the simplest lease must (1) identify the landlord and tenant (or their agents); (2) identify the rental premises; (3) set out the duration of the lease; and (4) state the rent or other consideration to be furnished by tenant. Satterfield v. Pappas, 67 NC App 28 (1984). In a lease repeating from period to period – e.g., a month-to-month lease – the agreement may be terminated in any way specified by the lease, whether it be 30 days' oral notice, one days' written notice, or five days' notice delivered by a rider on horseback. If the lease is silent on the matter, GS 42-14 *fills in the blank by requiring 7 days' notice prior to the end of the rental period.*

When parties wish to have greater control of the details of their agreement, that control is achieved through longer, more detailed contracts. Such contracts can specify precisely what is required of each party, as well as the consequences of a contract violation. The parties also have an opportunity to anticipate future events and spell out their agreement about how those events will be handled. Unless a contract provision violates public policy or otherwise runs afoul of the law, a court will enforce these provisions.

The answer to most of the questions I receive about landlord-tenant law is "It depends on what the

lease says." Does a landlord have a legal right to enter rental property in the event of an emergency? Can a tenant be evicted for breaking rules set out in the lease? Can a landlord charge a late fee? Does a lease terminate if a tenant dies? Must a landlord demand the rent and wait ten days before filing a summary ejectment action? The answer to each of these questions depends on what the lease says. A well-written lease that clearly spells out the parties' agreement is an incredibly powerful tool for establishing "the rules of THIS case."

When a person breaches a contract, the other contracting party can file a lawsuit asking for damages caused by that breach. The plaintiff must provide the court with a copy of the contract if written, specifically identify the contract term allegedly breached, and prove that the defendant did in fact breach that term. In determining damages, contract provisions related to recoverable damages (e.g., attorney fees) are enforceable if not inconsistent with the law.

A summary ejectment action is a lawsuit filed by a landlord seeking the legal remedy of possession arising out of the tenant's breach of the lease. The evidence a landlord must produce in support of this claim is (1) a copy of the lease if it is written (or testimony establishing an oral agreement—and the terms of that agreement—if there is no written lease); (2) identification of the provision allegedly breached; and (3) proof that the tenant breached that provision. Whether the court will award late fees, a court appearance fee under GS 42-46, attorney fees, or other particular damage items will depend on whether and how those items are included in the lease.

In a straightforward breach of contract case, the proper parties to the lawsuit are the parties to the contract. A contract "establishes the rules of this particular case" only for the parties who agreed to those rules, and they are the correct parties in a lawsuit based on the contract. When an agent enters into a contract on behalf of someone else, the general rule is that the agent is not personally obligated by the contract and is not an appropriate party to a lawsuit: if you purchase an oven from Sears, the contract is between you and Sears, not between you and the Sears salesperson.

In a summary ejectment action, the proper parties to the action are the parties bound by the lease agreement. It is the lease agreement which establishes the essential landlord-tenant relationship between the owner of rental property and the person renting it. When an owner is represented by an agent, the agent is like the Sears salesperson: neither personally bound by the lease agreement, and not a proper party to the lawsuit.

The highly specialized nature and complexity of landlord-tenant law makes it easy for everyone involved with it to lose sight of the fundamental truth at its center: a lease is a contract. Magistrates sometimes encounter cases in which a lease downloaded from the internet has been subsequently signed by both landlord and tenant with neither of them reading or talking about its terms. This indicates a fundamental misunderstanding of how all this works. A lease is not a "thing" parties should have—it's a tool parties should use, to determine the rules for their particular agreement. The same general knowledge most of us have about contracts applies with equal force to leases. Just as with any other important contract, parties should decide on their agreement and then put it

in writing. If details are important to them, they should agree on those too, and include that agreement in the writing. They should bring the writing to court. Things will go much better.